

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6056

PETITION OF LAWRENCE K. AND JENNIFER L. BOU
(Hearing held March 9, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, April 7, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioners propose the construction of a new single-family dwelling that requires a 17.10 foot variance as it is within thirty (30) feet of the established front building line. The required established building line is 47.10 feet.

The petitioners were represented by Kinley Dumas, Esquire, and Paul Davey, an architect, at the public hearing.

The subject property is Lot 6, Block 9B, Glen Echo Subdivision, located at 5701 Mohican Place, Bethesda, Maryland, 20816, in the R-90 Zone (Tax Account No. 00503068).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners proposed the construction of a new single-family dwelling.
2. Ms. Dumas stated that the subject property was platted in 1940 and that the existing house was built in 1942. The existing house currently straddles the property line between Lots 5 and 6. Ms. Dumas stated that the petitioners propose the demolition of the existing house and the reconstruction of a new single-family dwelling. See, Exhibit No. 4 [site plan]. Ms. Dumas stated that both lots are buildable lots and that the zoning in neighborhood was reclassified from R-60 to R-90.
3. Ms. Dumas stated that the petitioners are the owners of both lots. Lot 5 is 8,841 square feet and Lot 6 is 7,776 square feet. A revised building permit denial and a revised established building line survey were entered in the record because the original documents showed

that both lots must meet an established building line requirement. Ms. Dumas stated that only Lot 6 must meet an established building line requirement and that a 30-foot front yard setback is required for Lot 5. See, Exhibit Nos. 11 and 12 [revised building permit denial and updated established building line survey].

4. Exhibit No. 14 shows a vicinity map with photographs of houses in the area of the subject property. Ms. Dumas stated that Lots 9A and 26 were used in the established building line calculation.
5. Mr. Davey testified that the existing house is a non-conforming structure that is currently located 25 feet from the front yard property line. Mr. Davey testified that Lots 5, 6, 10C and 26 fronts on Wiscasset Road and that Lot 9A, 9B and 9C are thru-lots that front on both Wiscasset Road and Massachusetts Avenue. See, Exhibit No. 15 [rendered site plan].
6. Mr. Davey testified that the average depth of the surrounding lots is 128.93 feet and that the subject property is 98 feet in depth, making it 24% smaller than the surrounding properties. Mr. Davey testified that the subject property is shallower than the surrounding properties and that the application of the established building line further restricts the property's buildable envelope. See, Exhibit 16 [lot depths in the surrounding area].
7. Mr. Bou testified that he has lived in Montgomery County all of his life and that the house, as proposed, will be in harmony with the other homes in the neighborhood. Mrs. Bou testified that the siting of the new house would provide greater privacy for the neighboring properties.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The proposed construction will demolish an existing house that straddles Lots 5 and 6 and reconstruct a new house on Lot 6. Lot

5 is 8,841 square feet and Lot 6 is 7,776 square feet. Both lots are substandard for the R-90 Zone. Lot 6 is 24% shallower in depth than the surrounding properties and the application of the established building line requirement further restricts the property's buildable envelope.

The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance requested for the construction of a new single-family dwelling is the minimum reasonably necessary.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the new construction will be compatible with the surrounding properties and that the variance will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of 17.10 feet from the required 47.10 foot established front building line for the construction of a new single-family dwelling is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witness and the representations of their attorney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

2. Construction must be completed according to plans entered in the record as Exhibit Nos. 5(a) through 5(e) and 12.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Wendell M. Holloway, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 7th day of April, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.